IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9343 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MAHENDRA MILLS LIMITED

Versus

GUJARAT ELECTRICITY BOARD

Appearance:

None present for Petitioners

None present for Respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 13/06/2000

ORAL JUDGEMENT

#. Arguments were heard in this case earlier and the matter is placed today in court for dictation of the order. Nobody is present on behalf of either of the

parties.

#. The petitioner No.1 is a company and No.2 is its Executive Director, by this petition under Article 226 of the Constitution of India praying for quashing and setting side the letter dated 17.12.1997 of the respondent No.1 at Annexure-D and prayed further to direct the respondents not to disturb the work of the petitioner No.1 company by taking any action as stated in Annexure-D. Further prayer has also been made for grant of interim relief.

#. The matter has come up for preliminary hearing in the court on 30.12.97 on which date the notice has been issued to the respondents and the interim relief in terms of para 18(d) has been granted. This interim relief continued till this day. The draft amendment has also been granted.

#. The facts of the case are that on 10.5.95 the petitioner No.1 company was declared a Sick Industrial Undertaking under the provisions of the Sick Industrial Companies (Special Provisions) Act, 1985. During the period 1996-97 due to financial difficulties as what the company is contending, it became irregular in payment of dues for electricity consumption and the arrears mounted. On 13.6.97 the respondent No.1 disconnected the power supply of the petitioner company in exercise of powers conferred upon it by the provisions of Section 24 of the Indian Electricity Act, 1910. On 16.6.97 a permission was granted by the Board to the petitioner-company to instal diesel generating sets for the purpose of generation of electricity. On 17.12.97 the Board gave a notice to discontinue the generation of power immediately and directed respondent No.2 to take over the premises where the generators are installed. Hence this Special Civil Application.

#. The learned counsel for the petitioner contended that the action of the respondent-Board to ask the petitioner to discontinue the generation of power from DG sets immediately is wholly arbitrary and unjustified. It has next been contended that the company is a sick unit and otherwise also this action could not have been initiated by the Board. Lastly it is contended that once the Board has permitted the petitioner to instal DG sets for the purpose of generation of electricity this facility could not have been discontinued. Nobody was present on behalf of the respondents to make any submission on that date also.

#. I have given my thoughtful consideration to the submissions made by the learned counsel for the petitioner. Annexure-D is the impugned order / letter and I consider it to be appropriate to reproduce the same in this judgment :-

"In pursuance of the powers conferred under section 44 of the Electricity (Supply) Act, 1948, the Board has given you a consent for installation of 3 nos. 1000 KVA capacity (each) Diesel Generating sets for installation (as stand by sets) at your mill at Kalol vide our letter dated 13.6.1997 (referred above at reference no.1). According to the condition no.3 of the said consent letter, you can operate these DG Sets during non-availability of power from the Board to make up the loss of power during exigent situations only, viz. temporarily non-supply of power arising due to power cuts or during power failure.

In exercise of the provisions of Section 24(1) of the Indian Electricity Act 1910 your power connection has been disconnected by the Board due to non-payment of energy bill w.e.f. 13.6.1997. This therefore does not purport to be a cause of temporarily non-supply of power arising due to power cuts or power failure. Though, your power supply has been disconnected due to non-payment of the Board's dues, you are operating the DG Sets in violation of the conditions of the consent

Considering the above facts, the consent issued to you is liable for withdrawal due to breach of the condition no.3 of the consent issued to you.

You are therefore, hereby warned to stop generating power from these DG Sets IMMEDIATELY upon receipt of this letter failing which, the consent issued to you shall stand withdrawn from the FIFTEENTH day of issue of this letter."

#. The Board in pursuance of the powers conferred under Section 44 of the Electricity (Supply) Act, 1948 given a consent for installation of 3 nos. 1000 KVA capacity (each) Diesel Generating set at the mill of the petitioner under the letter dated 13.6.1997 as per Annexure-D and 16.6.1997 as per the petitioners' list of events. However the date is not very material. According to the condition No.3 of the consent letter,

the petitioners can operate these DG sets during nonavailability of power from the Board to make up the loss of the power during the exigent situation viz. temporarily non-supply of power arising due to power cuts or during the power failure.

#. In this case, the power connection of the petitioner has been disconnected by the Board due to non-payment of energy bills w.e.f. 13.6.1997. After disconnection of the electricity connection by the Board for nonpayment of energy bills, the petitioner could not have operated DG sets as the operation thereof is clearly in contravention of the condition No.3 of the consent letter of the Board. The generation of the electricity by DG sets was permitted to the petitioner by the Board during nonavailability of power from the Board to make up loss of power during exigent situation i.e. temporarily non-supply of power arising due to power cuts or during power failure. In these two exigencies only the petitioners are entitled to generate the power by operation of DG sets and not otherwise. In the facts of this case, the generation of power by the petitioner by DG sets after the disconnection of its power connection by the Board due to nonpayment of energy bills w.e.f. 13.6.1997 is wholly illegal and the petitioners cannot be given any protection. It is a case where the petitioners have made an attempt to take benefit of their own fault and lapse. It has made an attempt to make use of its own fault and default. This way if it is permitted then the company will not pay the heavy electricity dues of the Board and will permit the disconnection of the power supply due to nonpayment of dues of electricity consumption and still it will not suffer in any way as it will generate its own electricity. The Board has permitted generation of electricity by DG sets only in specified exigencies. The ground given that the Board has permitted installation of the DG sets for generation of electricity by the petitioner is hardly of any substance and help to the petitioners. This generation of electricity by the petitioner by using these DG sets is permissible only in certain agreed conditions and not otherwise. That is not the case here. The last contention raised that the company is declared sick unit is of no help to the petitioner. Even if the petitioner company is declared to be sick industry, it cannot be permitted to act contrary to the condition, subject to which installation of DG sets at the mill of the petitioner company has been permitted by the Board. It is a very serious matter though the Board has taken a very liberal view. It is a matter where much more serious action could have been taken rather than to feel

satisfied and contended only give a notice to the petitioner to stop generating power from DG sets immediately. For all these years under the court's order the petitioner has generated the electricity. It is a serious matter and in fact an attempt on the part of the petitioner to defraud the Board. The consumption charges have not been paid. The public body is not receiving any penny from the petitioner. But for these DG sets, which are permitted to be installed, the petitioners could not have electricity to run the factory. That is not the object and purpose to give this facility by the Board to the petitioners. In fact, it is a clear case of attempt by the petitioners to defraud or to cheat the Board. The Board is expected to have taken more drastic action rather than to felt contended and satisfied by giving this notice / letter dated 17.12.1997 at Annexure-D.

In the result, this Special Civil Application fails and the same is dismissed. It is a case where exemplary costs is to be awarded to the Board. The petitioner is directed to pay Rs.10,000/= as costs of this petition to the Board. Rule is discharged. Interim relief granted earlier stands vacated.

(S.K.Keshote, J.)

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